

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Nick Sakellis, owner of Amherst Chicago Pizza, Inc.

Date application filed with the Town Clerk: July 21, 2005

Nature of request: To renew Special Permit FY98-0021 to operate a Class II restaurant under Section 9.22 of the Zoning Bylaw.

Address: 150 Fearing Street (Map 11C, Parcel 36, R-G Zoning District)

Legal notice: Published on August 10th and 17th, 2005, and sent to abutters on August 10, 2005.

Board members: Zina Tillona, Joan Golowich and Susan Pynchon

Submissions: The applicant submitted the following documents with his application:

- Management Plan
- Seating Plan
- Floor Plan
- Parking Plan
- Aerial view GIS maps
- Diagram indicating the location of trash and recycling receptacles
- Copy of a photograph of the property.

Town staff submitted the following:

- A memo from the Assistant Fire Chief stating that the Fire Department has not had experience that would require special precautions at the site
- A memo from zoning staff outlining the history of the building, the 10 Special Permits dealing with this restaurant, additional permits for other uses in the building, the non-conformity of the property, and the good police record for the restaurant.

Site Visit: August 30, 2005

The applicant was not present for the site visit, so the Board was only able to view the large parking area, the residential character of much of the neighborhood, and the close proximity to the high-rise dormitories of the University of Massachusetts

Public Hearing: August 25 and September 1, 2005

The hearing had been advertised for August 25, 2005, but a Board quorum could not be reached, and the hearing was continued to September 1, 2005.

Mr. Sakellis and his attorney Barbara Hawley were present at the hearing. Ms. Hawley made the following points:

- Chicago Pizza has been in operation since 1992
- Mr. Sakellis has owned the business since 1998
- There has been no change in the operation since 1998
- There have been no complaints from police or neighbors
- The main door on Fearing street is both entrance and exit for the customers, but there is another means of egress in the back of the restaurant.
- The hours of operation are from 11 am to 1 am Sunday through Thursday, and 11 am to 2 am Friday and Saturday.
- No alcohol is allowed in the restaurant, and there is no live entertainment.
- Take-out service is available during the same hours of operation.

The Board opened the discussion to the public.

Susan Hugus, 140 Fearing Street, had a number of comments

- She asked that the petitioner not get rid of his garbage at 3 am. She lives next door and the bags being dragged across the parking lot wakes her.
- The dump trucks pick up the garbage at 7 am.
- The parking lot is a problem. "Kids" drink in the parking lot. She has called the police to get them out. Perhaps if a light were placed in the south-east corner of the lot, security there would be better.

Mr. Sakellis stated that for health and safety reasons, they are required to empty the garbage when the restaurant closes. He uses plastic bags and cans. Some can be picked up and carried; some are wheeled over on a cart. The noise heard may be that of opening the dumpster.

Mr. Sakellis explained that the dumpster is located at the southern end of the parking lot. The employees use hand carts for the bags of garbage. One person takes the cart, with 2 to 4 bags on the cart. The petitioner said that he will try to minimize the noise if possible

As for lighting, Mr. Sakellis said that he cannot do anything. Bill Gillen owns the property, and he is responsible for that.

Ms. Hawley said that she will ask Mr. Gillen about extra lighting for the lot. Perhaps a sensor light would be most appropriate.

Mr. Sakellis stated that he's never had any police calls. He is there to help the kids, to talk and listen to them, to give them a home. That's why he's been so successful.

Susan Pychon moved to close the evidentiary part of the hearing. Joan Golowich seconded the motion, and the vote to close the hearing was unanimous.

Public Meeting:

The Board commented on the good management of Chicago Pizza, especially given its close proximity to the Southwest dormitories and to residences.

They Board found that the reasons for approving the previous Special Permit continue to exist, and that most of the conditions of that permit are still relevant.

Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 & 10.381 - The proposal is suitably located in the neighborhood and compatible with existing uses because the non-conforming creamery building has been situated there for over 100 years, prior to the neighborhood becoming residential. In addition, a pizza restaurant is convenient and safe for the many students nearby who frequent it. No objections concerning the operation of the restaurant were presented.

10.382, 10.385, 10.386 & 10.393 – The proposal does not constitute a nuisance and protects adjoining premises since there is no music, alcohol or outdoor dining. The double front door helps to prevent noise from escaping into the neighborhood, and auto traffic is not heavy since many of the patrons simply walk from the dormitories across the street. Lighting and signage are minimal and not intrusive into the residential neighborhood.

10.384 – Adequate and appropriate facilities are provided because the restaurant and parking lot are both large and can accommodate the patrons easily. The other uses of the building are largely daytime uses and the restaurant does not interfere with the parking needs. All of the safeguards that are currently in place will remain.

10.387 & 10.388 – The proposal provides convenient and safe vehicular and pedestrian movement, and adequate space for off-street deliveries because there is a big parking area on the lot, and many of the patrons can walk to the facility.

10.389 – The proposal provides adequate methods of disposal for refuse and recycling because there is a common dumpster and recycling area provided on the property, and the applicant is diligent about removing waste from the restaurant daily.

10.398 – The proposal is in harmony with the general purpose and intent of this Bylaw, because it makes good use of an historic “creamery” building (a change from ice cream to pizza) provides a safe, non-alcoholic place for patrons, and is not intrusive to the surrounding residential neighborhood.

Zoning Board Decision:

Joan Golowich moved to APPROVE the proposal with conditions. Zina Tillona seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to APPROVE the renewal of Special Permit FY98-0021 to Nick Sakellis to operate a Class II restaurant

under Section 9.22 of the Zoning Bylaw on the premises at 150 Fearing Street (Map 11C, Parcel 36, R-G Zoning District), with conditions.

ZINA TILLONA

JOAN GOLOWICH

SUSAN PYNCHON

FILED THIS _____ day of _____, 2005 at _____,

in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2005.

NOTICE OF DECISION mailed this _____ day of _____, 2005
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2005,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit to Nick Sakellis, owner of Chicago Pizza, Inc. to renew Special Permit FY98-0021 to operate a Class II restaurant under Section 9.22 of the Zoning Bylaw on the premises at 150 Fearing Street (Map 11C, Parcel 36, R-G Zoning District), subject to the following conditions:

1. The hours of operation shall be from 11 am to 1 am Sunday through Thursday, and 11 am to 2 am on Friday and Saturday.
2. There shall be no more than 3 delivery vehicles associated with the restaurant use.
3. After 10 pm, deliveries shall be made from the Fearing Street entrance.
4. Any plans for exterior changes (windows, brick facing, lighting, awnings, etc.) shall be submitted to the Board for review and approval at a public meeting.
5. Any changes in signs or location of signs shall be submitted to the Board for review and approval at a public meeting.
6. Parking, including entrances and exits, shall be as shown on the plan submitted and approved by the Board at the public meeting of September 1, 2005.
7. The business shall be operated as described in the management plan approved by the Board at the public meeting on September 1, 2005 and on file in the zoning office.
8. Trash and recycling receptacles shall be located as shown on the plan approved at the public meeting of September 1, 2005.
9. This permit shall be reviewed at a public meeting of the Board upon any changes in management or ownership of the business.

ZINA TILLONA, Chair
Amherst Zoning Board of Appeals

DATE